

NO. _____

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, T E X A S
	§	
AUSTRENDS INCORPORATION;	§	
BOUNDS AND PINTO MARKETING,	§	
INC. D/B/A PBC MARKETING CO.;	§	
and TERRY CHRISTOPHER BOUNDS,	§	
Defendants.	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott (“State” or “Plaintiff”), complains of AUSTRENDS INCORPORATION, BOUNDS AND PINTO MARKETING, INC. D/B/A PBC MARKETING CO., TERRY CHRISTOPHER BOUNDS, (“Defendants”), and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.3 (a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41 *et seq.* (Vernon 2002 and Supp. 2004) (“DTPA”) upon the ground that the Defendants have engaged in false, deceptive and misleading acts and practices in the

course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

DEFENDANTS

3. Defendant Austrends Incorporation is a Texas corporation, and may be served with process by serving its registered agent, Diana L. Lerma-Bounds, 715 W. 23rd Street, Suite F, Austin, Texas 78705.

4. Defendant Bounds and Pinto Marketing, Inc., doing business as PBC Marketing Co., is a Texas corporation, and may be served with process by serving its registered agent, Terry Christopher Bounds, 715 W. 23rd Street, Suite F, Austin, Texas 78705.

5. Defendant Terry Christopher Bounds is Director of Austrends Incorporation, and President of Bounds and Pinto Marketing, Inc., and may be served with process at his home located at 14412 Friendswood Lane, Austin, Texas 78737.

VENUE

6. Venue of this suit lies in TRAVIS County, Texas, for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE § 15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Travis County, Texas;
- B. Under the DTPA § 17.47(b), venue is proper because Defendants have done business in Travis County, Texas.

PUBLIC INTEREST

7. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in,

and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe the Defendants have caused adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State, and that imminent harm exists in that Defendants will continue to cause such adverse effects.

TRADE AND COMMERCE

8. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by DTPA § 17.45(6).

ACTS OF AGENTS

9. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- A. Defendants performed or participated in the act; or
- B. Defendants’ officers, agents, or employees performed or participated in the act on behalf of and under the authority of Defendants.

NOTICE BEFORE SUIT

10. Pursuant to DTPA § 17.47(a), the Consumer Protection and Public Health Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit. Specifically, notice was sent to Defendants’ attorney, Sean Breen.

SPECIFIC FACTUAL ALLEGATIONS

11. Austrends Incorporation (“Austrends”) is a marketing research company which conducts demographic surveys. Terry Christopher Bounds is the Director of Austrends and directs all of its’ activities.

12. Bounds and Pinto Marketing, Inc. does business as PBC Marketing Co., (“PBC”). PBC

is a telemarketing company. Terry Christopher Bounds is the President of PBC, and directs all of its' activities.

13. Austrends places stands in shopping malls, movie theaters, boat shows, home shows, festivals, and various other venues throughout Texas. In some circumstances, Austrends pays the venue for the privilege of placing its' stand at the venue; in other circumstances, the venue agrees to allow the stand in exchange for the demographic information that Austrends gathers from visitors to the venue.

14. The stands that Austrends places in venues have signs which advertise a chance to win a prize. For example, in December of 2003, Austrends had stands in Regal Westgate 11 Theatres in Austin with signs that read: "Enter Here to Win \$500.00 HEB Shopping Spree."

15. On the stands advertising the chance to win a prize, Austrends places stacks of forms labeled "Visitors Survey." See Exhibit 1, attached. The forms ask for name, address, marital status, date of birth, home and work telephone numbers, and annual household income. The forms placed at the Westgate movie theater also asked what prompted the consumer's visit to the theater. Forms placed at a boat show asked whether the consumer intended to buy a boat in the next year, and other forms ask for the consumer's occupation. In smaller print at the bottom, some forms read: "Copyright Austrends Inc., 2003. please call Regarding the drawing" [sic]. Other forms read: "Please Call Me. Thank you! Copyright Austrends, Inc."

16. An employee of Austrends places the stands with "Visitors Survey" forms at the venues, and collects the completed forms from the venues, and brings them back to Austrends and PBC at 715 W. 23rd Street, Austin, Texas 78705.

17. At that location, the forms are sorted by employees of Austrends and/or PBC. The forms are divided into two groups: (1) those that are “qualified leads;” and (2) those that are not qualified leads. Qualified leads are consumers who have filled in the form indicating that they are either married or widowed, are under the age of 70, and have income over \$35,000.

18. The “qualified leads” are given to the telemarketing staff of PBC. The telemarketers call the “qualified leads” and attempt to get these consumers to agree to attend a weekend sales presentation at a timeshare resort. At the sales presentation, the consumers will be solicited to buy a timeshare at the resort.

19. Defendants are paid \$350.00 by the timeshare resort for each “qualified” consumer who attends a weekend sales presentation.

20. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” the identity of the entity that is soliciting their personal information.

21. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” the identity of the entity that will be sold their personal information by Defendants.

22. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” that the purpose of collecting their personal information is so that Defendants can call the consumers and solicit the consumers’ attendance at a sales weekend for timeshares.

23. When Defendants contact “qualified leads” they do not disclose to the “qualified leads” that they are receiving a telemarketing call because they filled out a “Visitors Survey,” ostensibly in order to have a chance to win a prize.

24. Defendants do not disclose to consumers who are solicited to fill out the “Visitors

Survey” the fact that entries from various, unrelated venues will be combined together in order to select a winner.

25. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” the fact that significant periods of time may pass before a winner is selected, and that the date on which the winner will be selected is entirely at Defendants’ discretion.

26. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” the fact that some entries may be discarded by Defendants before a winner is chosen.

27. Defendants do not disclose to consumers who are solicited to fill out the “Visitors Survey” the fact that in some instances entries are solicited by Defendants, but no prize is awarded.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

28. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this Petition.

29. Defendants, as alleged and detailed above, have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce, in violation of DTPA § 17.46(a).

30. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA § 17.46(b)(2).

31. Defendants, as alleged and detailed above, have caused confusion or misunderstanding as to the affiliation, connection, or association with, or certification by, another, in violation of DTPA § 17.46(b)(3).

32. Defendants, as alleged and detailed above, have represented that goods or services have

sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not, in violation of DTPA § 17.46(b)(5).

33. Defendants, as alleged and detailed above, have represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of DTPA § 17.46(b)(12).

34. Defendants, as alleged and detailed above, have failed to disclose information concerning goods or services which was known at the time of the transaction with an intent to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA § 17.46(b)(24).

PRAYER

35. Because Defendants have engaged in the unlawful acts and practices described above the Defendants have violated the law as alleged in this Petition.

36. WHEREFORE, Plaintiff prays that, upon final hearing, a permanent injunction be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

- A. Soliciting consumers for their personal information without clearly and conspicuously disclosing:
 - i. The entity soliciting the information;
 - ii. The entity or entities on behalf of which the information is being collected;

and

iii. The fact, if such is the case, that the information is being collected for the purpose of:

a. Contacting the consumer by any means, including but not limited to, telephone, facsimile, direct mail, and electronic mail, for the purpose of:

1. Soliciting the consumer for any consumer good or service; or

2. Soliciting additional information from the consumer;

B. Calling consumers who are on the Federal or Texas Do Not Call Registry, unless there is a statutory exception that allows the call;

C. Holding surveys, drawings, or contests unless the following conditions are met:

i. All applicable material terms and conditions are clearly and conspicuously disclosed. Such terms and conditions include, but are not limited to:

a. Any restrictions on entry, including but not limited to:

1. Age restrictions; and

2. Restrictions on the number of entries per individual or family;

b. The parameters of the eligible pool of entries for purposes of awarding the prize, including but not limited to:

1. If applicable, the fact that incomplete entries will not be part of the pool of entries from which a winner will be chosen; and

2. If applicable, the fact that entries from one location and/or

event will be combined with the entries from other location(s)
and/or event(s);

- c. The time period during which entries will be accepted;
 - d. The date on which the prize will be awarded; and
 - e. If applicable, the fact that the individual awarded the prize will be required to sign a release, and the material terms and conditions of that release;
- D. Holding a survey, drawing, or contest in which the prize is not awarded within a reasonable period of time from the start date of the survey, drawing, or contest;
- E. Holding a survey, drawing, or contest in which the winner of the prize is not chosen from all eligible entries; and
- F. Holding a survey, drawing, or contest in which the advertised prize is not awarded.

37. In addition, Plaintiff respectfully prays that this Court:

- A. Order Defendants to pay civil penalties of up to \$20,000.00 per violation to the State of Texas for violations of the DTPA;
- B. Order Defendants to pay restitution, as provided by law;
- C. Order Defendants to pay pre-judgment and post-judgment interest on all awards of damages or civil penalties, as provided by law; and
- D. Order Defendants to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

38. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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